In this article, we examine the structural elements of the Australian Government's filter policy as it has evolved over time, paying particular attention to the scope of the proposal, and the possible civil liberties implications of the proposal as it is presently formulated. More precisely, we argue that, by anchoring the proposal in the RC classification scheme, the filter will block far more than illegal material and, as a consequence, there is cause to be worried that a censorship regime is being created, as opposed to a system to protect children. We also explore the significance of civil liberties in the context of a liberal democracy and demonstrate the value they bring to Australia and show how freedom of speech, expression and information are not properly protected under Australia's Constitutional Framework creating consequences for established democratic freedoms in Australian society if the present ISP policy is to be implemented.

INTRODUCTION

The capability and magnitude of the Internet challenges conventional boundaries in respect to available information and speed of delivery allowing considerable educational, cultural and economic opportunities. While regulation of content itself is not a new issue, the method of Internet delivery is problematic for regulatory regimes. Consequently, the Australian Federal government faces significant challenges in developing a regulatory framework that balances the risks of the online environment yet protects citizen's freedoms in a democratic country, as well as promoting the opportunities the Internet offers.

In this article, we examine the scope and potential civil liberties implications of the Australian Government's proposed Internet Service Provider (ISP) filter, which is based on the Refused Classification (RC) Content criteria that is administered by the National Classification Scheme. This examination draws on government documentation on, as well as press reportage and scholarly analyses of, the filter proposal. These varied sources are valuable insofar as they make possible an exploration of the filter proposal that incorporates understanding of government policy (and how this policy has shifted over time), public commentary and debate, and academic evaluation and critique.

In examining this material, we argue that the subjective nature of the RC criteria increases the potential for extensive expansion of the scope of the content that is to be filtered, giving rise to civil liberty concerns in respect to freedom of speech, expression and information. We conclude that, by following the present arrangement, the balance between the State protecting children online and adults having the right to choose will be disproportionately in the favour of the State with no real benefit for the children it seeks to protect.
THE AUSTRALIAN GOVERNMENT ISP FILTERING POLICY

The Government's attempt to establish mandatory filtering of the Internet has become a complex and controversial debate. Although, the intention of the scheme is the protection of children online (Conroy 2007), this key motivator has arguably become lost. Much has been written about the value of such a system in the protection of children and whether such a system can actually provide such protection.

The Government argues that it is responding to perceived parental concerns of being unable to safeguard their children from harmful content online. This motivation is valid and genuine and political reality necessitates that the Government responds to these concerns (see Vaile 2009 for evidence of this). However, in its attempt to facilitate this, Senator Conroy has poorly articulated the arguments, which at times have been confusing and unconvincing, further increasing the challenges of implementing such a regime. Consequently, it faces significant challenges in developing a regulatory framework that balances the risks of the online environment yet protects citizens' freedoms in a democratic country.

Senator Conroy argues that there is no 'silver bullet' for cyber safety, and that a range of measures (education, research and law enforcement) is necessary (Conroy 2009a; Conroy 2007). However, his focus on the filter as the key component to protect children online as well as his continuous shifting of the goalposts in terms of policy aspects leaves him open to criticism of producing a deficient approach not able to respond to parental concerns or evolving technology. Moreover, Conroy's remark that those who do not support the filter support child pornography is perceived by some as a tactic to shut down debate (Dudley-Nicholson 2008a), while the suggestion that the filter is not censorship because it is protecting children is deeply flawed. While discussion perhaps ought to be centred on what is the best way to protect children online, this has largely not occurred to date, despite a growing body of research in this area (see, in particular, Livingstone 2009; Green et al. 2011).

As a result, a lack of cohesive debate has done little to enhance discussion and has meant that the needs of children have been neglected. To date, discussion on this key aspect of the original policy, and how best to develop a model that could provide solutions to protect children online, has been lacking. The Government's attempt to respond to parental concerns, therefore, has produced a system that is flawed and arguably unworkable. The key difficulty with the current policy is the gap between what it promises and what it can in reality deliver.

The Australian Communications and Media Authority (ACMA) has identified three risks for the online world:

1. content risks (exposure to inappropriate content);
2. e-security risks (viruses, identity theft);
3. and behavioural risks (cyber bullying, grooming) (ACMA 2009).

Labor (Conroy 2007) acknowledges all these risks; however, the proposed filter will only address content risks on the Web. It will not do anything for material passed through peer to peer networks, which are secure, encrypted and avoid a central network server (thereby operating outside the filtering system) and where most child pornography is channelled (Vaile and Watt 2009), or chat forums and services such as MySpace, MSN, Skype, and so on (Collins et al 2008) where grooming is a concern. With development in Internet technologies and an increase in user-generated content and interactivity by young Australians, the risks for Internet users have increased (ACMA 2008a), and “analysts predict that, within a few years, 75 percent of all broadband internet services will be used for user generated content services” (ACMA 2008a, p. 24). This means that the filter, in its presently proposed form, is unlikely to effectively address the concerns of parents.

Additionally, the government does not provide evidence of the percentage of accidental exposure nor any evidence-based approach in justifying this policy (Hansard 2010; Wright 2010). Labor often cites research by Flood and Hamilton (2003a; 2003b) which recommended ISP mandatory filtering (with an opt-out system), as well as acknowledging that it was technically feasible (Lundy 2010). However, the Flood and Hamilton research was...
not an extensive study and has now been discredited (von Brasch 2010a). Considering the Internet is an environment where information is searched for, it might be argued that accidental exposure is likely to be relatively low. A user is not presented with information unless it is requested either by entering a website address in the browser or requesting the information through a search engine. Where exposure does occur unintentionally or through keyword or image searches that result in inappropriate links or redirections, there is no guarantee that the filter would prevent these occurrences (Meloni 2009; cf Eneman 2010).

Furthermore, it has been suggested that the proposed filtering regime could actually give parents a false sense of security when it comes to Internet safety, as they may believe the filter will make the online environment safe (Hansard 2010; Jacobs 2009). Parents play a critical role in the wellbeing of children online by controlling their child's access (Byron 2008); if parents believe the filter will do the work for them they may possibly change their supervision and management of Internet access.

As the policy currently stands, legislation would make it mandatory for ISPs to legally filter RC material (hosted on international servers) under the National Classification Scheme. The Labor Party 2007 scheme focused on the 'clean feed' concept that essentially means the government will legislate for ISPs to provide a service to censor certain content (through a blacklist) therefore removing access from the public. The original proposal was based on the 'prohibited' content criteria with an optional opt-out mechanism. Subsequently, the ISP policy has undergone a number of amendments: content to be filtered has changed from initially prohibited content (Nov 2007), to illegal content (Oct 2008), and finally to RC material (Mar 2009). The opt-out option has been removed meaning that adults would be excluded from having the choice of being part of the scheme, thus making it a mandatory system and a complete reversal from the 2007 position.

The reality of this current proposal is that the filter will only cover a small part of the Internet, with little prospect of achieving the objective of protecting children online (Moses 2008a; Moses 2008b; Dudley-Nicholson 2008b). Although parental concerns have been in the forefront of the Government's efforts in developing the initial filtering proposal, their failure to adequately address these concerns fuels criticism of the scheme. It has also become a much more complicated proposal given it reliance on the classification scheme and censorship.

Much has been written about the ISP filter policy, especially with respect to issues of transparency, accountability and appeals mechanisms – all of which were seen to constitute key aspects lacking in the original scheme. As a result of commentary on these issues, a consultation process was undertaken to address some of these concerns with changes being announced in 2010.

**THE CURRENT SITUATION**

In July 2010, before the Federal election, Senator Conroy revealed a “comprehensive suite of transparency and accountability measures to accompany the introduction of ISP filtering of RC content” (Conroy 2010a) taken as a result of a consultation process to address accountability and transparency concerns raised by stakeholders. Additionally, Senator Conroy announced a review to examine “the current scope of existing RC classification, and whether it adequately reflects community standards” (Conroy 2010a) owing to unease over this criteria being used in the mandatory scheme. These announcements, it could be argued, neutralised the debate by appearing to respond to criticisms of the policy and creating the impression that the scheme had altered. However, the four main structural elements of the scheme – that the system is mandatory, that RC Classification criteria is to apply (although presently under review), that the RC Content blacklist is secret, and that URLs will be added from international agencies – essentially remains the same, meaning that the scheme is fundamentally unchanged (unless there is some alteration to the RC criteria).

As the ISP filter survived the 2010 Federal election it is continuing to progress in the current minority government. Some reports say mandatory ISP filtering is at least two years away (Stilgherrian 2011) once the RC review is completed and implementation begins. Yet there is still strong opposition to it (Moses 2010a) and confusion as to when and if it will be
In the 2011 budget, ISP filter grants were cut and it was announced that the government “would not proceed with a funding program that has seen Australian ISPs provided with grants to offer internet filtering options to customers, citing a lack of interest in the project” (LeMay 2011a). Further, the Joint Select Committee on Cyber-Safety tabled its Interim report on the Inquiry into Cyber Safety (High-Wire Act: Cyber-Safety and the Young) on 20 June 2011 which questioned the effectiveness of ISP filtering and the “committee declined to make any recommendations or endorse the policy” (Hilvert 2011).

In June 2011, the Internet Industry Association (IIA) indicated it would release a voluntary ISP level blocking code. It is not clear what this code would entail, other than what was released in an IIA Media Release on 27 June 2011 which said “the voluntary industry code of practice for ISPs in Australia would entail blocking child pornography sites which would otherwise be available to Australians. It would rely on a blocklist compiled and supplied by Interpol, in cooperation with the Australian Federal Police” (IAA 2011). As of January 2012 this code has not been released.

In July 2011, a voluntary filtering scheme commenced which sees those ISPs who sign up to the scheme blocking a list of Interpol-compiled child abuse URLs. The Interpol list, as it is known, is said to contain “the worst of the worst” of such website URLs (Stilgherrian 2011). Although the scheme is voluntary for ISPs, users will have no choice but to be part of the scheme if their ISP has opted in (Moses 2011) and users will be unaware that their Internet connection is filtered (LeMay 2011b). The IIA had predicted that most ISPs would be part of the scheme by the end of 2011; however, it is believed that as of December 2011 only five ISPs have signed up for the voluntary scheme (LeMay 2011b). This voluntary scheme, which is administered by the Australian Federal Police, is completely separate from the mandatory ISP scheme the government is trying to implement and which forms the basis of this article.

Senator Conroy is steadfast in his commitment to implementing mandatory ISP filtering after the RC review (Moses 2011), even though there is currently no parliamentary (and limited public) support for it. While mainstream commentary has widely reported on a number of concerns with respect to the ISP policy including censorship, far less consideration is given to the possible civil liberties implications of this policy, which is the main focus of this article. Closer scrutiny of the filtering policy uncovers extensive ramifications for civil liberties that, we argue, makes the scheme incompatible with a liberal democracy such as Australia. We develop this argument in two directions: first, by examining the present scope of the policy and the possibility for further expansion of this scope; second, by considering the impact of this scope on civil liberties.

**THE SCOPE OF THE FILTER PROPOSAL, AND THE POTENTIAL FOR FUTURE EXPANSION**

The Government's commitment to use RC content to form the basis of the new Content List is problematic. According to von Brasch (2010a), Australia is “unique” as “in most countries, there is illegal material and there is legal material [... however] with RC, Australia has a category that is not illegal, but the government would prefer that we thought it was”. Senator Conroy insists that the material he wants to block is illegal material under RC; however, this, to a degree, is misleading. Although, a portion of RC material is illegal, there is another portion which is not. For example, a “detailed discussion of euthanasia” regularly falls under the RC category of “detailed instruction to crime” and is blocked (von Brasch 2010b). Furthermore, the difficulty with RC material is that,

> the interpretation of the RC category on its own opens an array of potential issues [... in that] the Classification Act does not offer detailed criteria for determining whether content is RC. Rather, it states that material be classified in accordance with the principles in the National Classification Code. These guidelines are extremely broad (Lumby et al 2009, ii).
RC material is currently readily available and “is actually material that should be made available to the general public [… and] stopping such material, information about the holocaust, inquisition, torture […] and so on] has other far more dangerous consequences” (Landfeldt 2009). Additionally, and as already noted, RC content is not necessarily synonymous with illegal content. As von Brasch notes,

> almost everything that is RC is legal to own and view by a majority of Australians […] the notable exception being child pornography, which is illegal everywhere. The Government's proposal to block RC material on the Internet is thus an attempt to censor legal material (von Brasch 2010b).

A key issue with RC classification is the question of what will occur to socially or politically sensitive material under the scheme. RC potentially includes controversial content relating to such things as suicide, crime, and religious issues (Sandy 2009), as well as educational information on safe drug taking. Other content that could be deemed RC and potentially blocked includes information discussing the “geo-political causes of terrorism” or a “safe site for young gay and lesbians” (Lumby et al 2009, iii).

Moreover, Mark McLelland (2010) argues that certain genres of Japanese animated fiction could be potentially blocked, particularly as Australia's legislation governing sexual abuse materials and child pornography is broad. The reasons for this are twofold. First, child sexual abuse imagery is an extremely wide category. As McLelland explains,

> [it] extends even to purely fictional representations of 'under age' characters in violent or sexual scenarios – including animation, comics, art work and text […] hence, existing legislation targets not only a small coterie of adult paedophiles […] but extensive communities of animations, comics and gaming (ACG) and 'slash' fans (McLelland 2010, 3-4).

Second, child pornography has no clear-cut and universally accepted definition. As Maurushat and Watt (2009, 5) explain, “the term is ambiguous even within Australia, where State and Federal definitions vary”. Here is an issue that perhaps ought to be clear-cut yet isn't and where the definition is also dependant on State legislation.

This potentially allows grey material under the RC classification to become more contentious, as interpretations are at the discretion of the Classification Board (CB), and, even though they are the most capable body, they will deal with “an online environment in which the range, scope and purpose of material is far wider than that encountered in films produced for entertainment purposes” (Lumby et al 2009, ii). These examples illustrate how RC content could encroach on territory that is arguably not child sexual abuse material. As the scope is more comprehensive than child pornography it challenges the government's claims that the filter is principally for the protection of children, as its reach is potentially far more extensive.

What is important to note with these examples, however, is that they are, for all intents and purposes, hypothetical, as material has to be deemed RC in order to be blocked. Nevertheless, due to the nature and breadth of the category, and based on the CB's and ACMA's previous classification decisions, these are genuine possibilities (Lumby et al 2009). Overblocking is thus a real likelihood, and managing such a likelihood is critical, particularly in a mandatory scheme where the public has no control over what is blocked.

Use of the RC category also makes it plausible that the filtered content will increase from the original intention of the policy. This can occur in at least two ways:

1. when future governments legislate to broaden the classification of RC; and/or
2. where classification expands by increasing the amount of “grey material” as content that is deemed RC.

Such “scope creep” was one of the concerns raised by content providers in the Feasibility Study ISP Level Content Filtering Report that “content broadens beyond what may be initially in scope” (Collins et al 2008, p. 39). This is not only credible, it is made easier by the fact that filtering will be mandatory. Senator Ludlum argues that “the idea that
future governments will not be tempted to expand its scope is impossible to entertain” (Hansard 2010, 2606) and “inevitably it will be expanded – the temptation will be too great for governments to resist” (Karena 2009).

Already the ACMA blacklist includes material which is “not illegal” but “offensive” (Lumby et al 2009) and the RC category has content which includes “legal material such as regular gay and straight porn sites, fetish sites, euthanasia material and innocuous sites that have been mistakenly prohibited” (Moses 2009).

Although politicians do not classify content, they do legislate what “categories of content” will be prohibited (Moses et al 2010). Any government of the day could possibly expand the content criteria (Moses 2010b) for material they find objectionable by, for example, undertaking a deal with an Independent who holds the balance of power in the Senate and using it as a bargaining chip in negotiations to pass legislation. Additionally, vocal lobby groups could campaign and pressure politicians to increase the list of material subject to RC classification (Moses et al 2010). These are legitimate possibilities that need to be considered before a mandatory system is put in place.

Governments do respond to outside influence and under pressure could possibly change legislation. By way of illustration, we might consider the example of artist Bill Henson in 2008. When some of his offline works were put online, a public outcry followed as some of the images were of young teenagers (Lumby et al 2009). Following this outcry, Henson’s works were seized by police with comments from the Prime Minister down (von Brasch 2010b). No uproar had occurred earlier when these same images hung in an art gallery (Lumby et al 2009). Ultimately, the CB rated all of the artwork at “G” (Lumby et al 2009; von Brasch 2010b). This example is not drawn upon to debate whether the images were appropriate or not, but to illustrate how easily an issue can become political and how images that were legal offline, can easily become contentious once placed online.

Controversial issues may become more contentious in the future. As Lumby et al (2009, 4) argue, “the potential for the broad language of the current classification code and guidelines […] is particularly the case under a mandatory rather than a voluntary filtering system. The diversity, intent and audience of online material multiplies this potential exponentially”.

Once infrastructure is in place, history shows that original policy can and does change with the passage of time and that expansion of the policy (rather than further restriction of its scope) is the most likely outcome. As Sandy notes, “there is plenty of precedents where something has been legislated for (or against) but this has resulted in unforeseen consequences. Legislation passed for one purpose can with interpretation or amendment be used for another” (Sandy 2009, 6).

It is these structural concerns which lay the groundwork for the consideration of the civil liberties discussion that follows. The civil liberties implications are of concern because the structure of the ISP policy illustrates potential difficulties associated with the policy and provides a framework that highlights the policy’s complexity and potential complications in its implementation. These complications relate to particular freedoms being impinged upon when this policy is made operational. These are significant concerns in any democratic framework as civil liberties are core values in a democracy and as such require protection from the State.

**THE POTENTIAL CIVIL LIBERTIES IMPLICATIONS OF THE FILTER PROPOSAL**

Any attempt to interfere with established civil liberties (even when the objective is regarded as well intentioned) requires considerable dialogue to ensure that the foundations of democracy are maintained.

Debate concerning civil liberties partially centres around the issue of the protection of the state versus the rights of individuals. With respect to the ISP policy, this involves the government’s perceived responsibility to protect minors from damaging material online versus the individual
having the right to choose what they view. In Australia, this is important and relevant given that, as a democratic country, individual freedoms are generally acknowledged, recognised and respected as an accepted part of society (Jones 1990; Gaze and Jones 1990).

One of the most influential liberal thinkers is John Stuart Mill (On Liberty 1859) who argued that an individual's full potential cannot be achieved if they can't think and act as they wish. Freedom of the individual, for Mill, is paramount; through the process of engagement, individuals are able to participate in the development of critical debate. It is this engagement which is of considerable value in a democracy as it allows the flow and exchange of views and ideas (Warburton 2009). In theory, through this exchange, individuals are better able to clarify their views, contribute to discussion and, ultimately, to decision making. Mill's views could, to a certain extent, be considered utopian as he believed the only justification for state intervention was when there was risk of harm to others (Mill 1969). Today, freedom is a balancing act: “it is not absolute and is restricted by legislation and common law […] balanced against the interest of state security, public order, public morality, and protection of privacy” (Jones 1990, 6).

According to philosopher Isaiah Berlin, the view of liberal thinkers, where individualism is the focus, is based on the notion of negative liberty (freedom from constraint). Berlin made the distinction between the “two concepts of negative and positive liberty”, where, in the case of negative liberty, there is an absence of restriction or intrusion from others and, in the case of positive liberty, the presence of something, the freedom to act (Berlin 1969).

Civil liberties are linked to democracy and are important to its function (Gaze and Jones 1990). In theory, these safeguards protect a citizen from the state, as they place restrictions on government that lessen the opportunities for its representatives to abuse their power and limit the lives of individual citizens. Democracy, however, is fundamentally a complex idea with no universal accepted model or definition (Strömbäck 2005) and “is not a unitary concept”.

The focus of discussion of civil liberties in this paper is on how they bring value to a democracy. This is done in order to show how the ISP policy will affect these freedoms. Civil liberties are here understood and discussed as freedoms “intended to safeguard individuals against the abuse of power. In this sense they are ‘negative rights’: they are about limiting what governments can do” (Rayner 1997, 35) – an understanding that links with Isaiah Berlin’s concept of negative liberty.

**Freedom of Speech and Expression**

It is argued that freedom of speech and expression are essential in a democratic society as “voters have an interest in hearing and contesting a wide range of opinions […] having access to facts and interpretations, as well as contrasting views” (Warburton 2009, 3) so that they can engage in debate and discussion (Jones 1990). This varied selection and availability of information, ideas, and opinions (particularly opposing ones), reflects the plurality and wealth of a society (Warburton 2009, 85-86).

In addition, it is worth noting the “public sphere” argument developed by Jürgen Habermas, with the “public sphere” being a place “made up of private people gathered together as a public and articulating the needs of society with the state” (Habermas 1989, 176). Through these acts of communication and dialogue, engagement with the public process is generated which either confirms or challenges the affairs of the state. A free society requires this engagement as “freedom of speech provides the ideological underpinning of individualism: it is fundamental that we can […] hold widely varied ideas and beliefs. This is the litmus test of democracy” (Jones 1990, 6).

Freedom of speech and expression to a certain extent is reliant on the information available to the public. Individuals are arguably less able to participate in debate if information is not easily accessible. Consequently, communication, which allows discovery and disclosure of information, provides the opportunity for the public to participate in debate if they choose to be involved.
Freedom of Information

Thus, the flow and access of information – the right to seek, receive and impart information and ideas – is vital for democracy. Citizens can only determine what is occurring in society and whether it is acceptable if they have access to information (Mendel 1999). A participatory representative form of democracy (Gaze and Jones 1990; Strömbäck 2005) encourages individual participation in public and political life as democracy is strengthened as people engage in their activities. As Strömbäck explains,

"democracy is the result of the attitudes and the actions [...] among ordinary people [...] To fulfill the role ascribed to them in the participatory model of democracy, people need the kind of knowledge and information that facilitates collective action, participation and engagement (Strömbäck 2005, 336).

The Internet has facilitated ready access to information. In respect to government information, access is based on the notion of the public interest and the argument that the public has the right to know what a government is doing in a democratic society (Mendel 1999). As Gaze and Jones explain,

"it is important that much of this information be made available to the public, in order that intelligent scrutiny of government actions and decisions can take place and citizens can vote and participate meaningfully in the political process (Gaze and Jones 1990, 226).

Access to this information allows the public to examine the activities and behaviour of government and thereby take part in an informed debate (Mendel 1999). Freedom of information is crucial to a healthy functioning democracy. The risk that the scheme will block far more content than it was set up to block means that it poses particular challenges to established democratic principles – even if the intentions for initially setting up the scheme were honourable.

Constitutional Framework

Australia is unusual insofar as it has no Bill of Rights protection, nor any provision under the Constitution for protection of civil liberties; it is one of only a handful of democratic countries where there is no legal instrument asserting freedoms for its citizens. In 2010, the Labor government rejected a Human Rights Charter, which would have recognised basic individual rights in legislation. The then Attorney-General Robert McClelland argued that there was concern about the outcome of such a charter resulting in a “shift of power from parliament to the judiciary” (Dunkerley 2010).

Therefore, under Australia’s current framework, the only protection Australians are afforded in legislation is limited to freedom of political communication. As Gelber (2004, 48) states, “with exception of the constitutional freedom of communication on political matters, free speech in Australia has historically been a residual freedom protected by the common law”. Since 1992, the High Court of Australia has clarified this implied freedom of political communication, however, there is still debate as to what it means in practice.

The benefit of having civil liberties enshrined in the Constitution is that they can only be modified or removed by having a referendum where the public votes for the change (Jordan 2002). Hence, “legal protection for civil liberties is, by the combined actions or failure to act on the part of judges, politicians, and the community, quite inadequate” (Gaze and Jones 1990, 24). Consequently, it may be possible to argue that Australia’s civil liberties protection is weaker than in other liberal democracies because of this lack of constitutional framework.

Australia’s lack of solid constitutional and legal structures, which protect civil liberties, could be seen to clear the road for full implementation of a mandatory scheme, as scrutiny is not supported by constitutional structures. Australia is a tolerant society and its civil liberties have been valued (Gaze and Jones 1990). However, as Gaze and Jones argue,
complacency should not lead us to think that legal protection for civil liberties is not important. A tradition of tolerance can be eroded unless care is taken to maintain it [...] without clear protection, civil liberties depend on restraint of those who hold, but may choose not to exercise, legal or governmental powers to interfere with them (Gaze and Jones, 1990, 24).

The ISP policy creates a situation where there is significant encroachment into the civil liberties of Australian citizens as a result of the design of the policy. The government, in undertaking to design a filter to solve the issue of online safety for children, has inadvertently produced a set of conditions that carry significant ramifications for Australian society in respect to democratic freedoms. While we fully support the need to protect the civil liberties of children (Eneman 2010, 234), the larger impact of this filter far exceeds the original dilemma the government was trying to solve (online protection of children), and will cause damage to Australia externally as a liberal democracy and internally as a society that values its civil liberties if it proceeds.

CONCLUSION

The ISP filter is a complicated proposal that does not adequately address the issues of online safety for children in ways that justify a mandatory ISP filtering policy. Although child sexual abuse content online is illegal and unquestionably wrong, essentially this filter is ineffective in protecting children from such content or other questionable material. The government is in the challenging position of having to respond to parental concerns and balance online freedoms for the community. Although well intentioned in wanting to protect children online it has proposed a filter that is a deficient approach as it will not effectively block sufficient harmful content in a way that will make a material difference to the protection of children. As Vaile and Watt state, such an approach is “unlikely to work in practice to effectively address either the threat of child pornography/child abuse material, or access to material with some capacity for harm” (Vaile and Watt 2009, p. 28).

Despite the transparency and accountability measures to be established and the review of RC guidelines, the ISP scheme remains flawed. The main structural components of the policy are unchanged, meaning that the scheme will still operate as a mandatory regime and the blacklist will yet remain secret, therefore forfeiting transparency and accountability (regardless of measures in place) and opening up the ISP regime to possible mistakes and possible political interference. The breadth of scope of the filter scheme, and its anchorage in RC classification criteria, result in a policy that has been revealed as capturing a significant amount of socially and politically controversial material that should not be blocked in a democratic country. As a paper by Hartley et al (2010, 4) states, “if material is heinous enough to be censored, it should be illegal, as determined by Parliament”.

As the Internet becomes more significant in terms of media, communication and distribution platforms, it can perhaps be argued that civil liberties need protection. Future debate on this possibly needs to be tied into the ways the Internet is being accessed and used by the public.

Rather than implementing a censorship regime, providing the public with the tools and skills to allow them to make decisions for themselves is a practice that is more aligned with democratic principles of choice. The government can play a productive role as “risk manager” by assisting the public, especially parents and children, with the necessary information and education to equip them so that they are able to make choices to correspond with their circumstances.

That there has been a marked shift in focus away from the original policy plan means that the policy now has no cyber safety benefit and it is highly doubtful that protection of children is still the principal aim of this policy.

Although there are unique challenges for the government in providing a regulatory framework, balance is required in managing protection of children and the protection of society’s freedoms. Implementing a mandatory regime that does not adequately respond to
key issues for children online and in turn encroaches on established civil liberties arguably means that government interference must be seen as a negative influence that undermines democratic principles.

It is argued that “the greatest threat to an individual's freedom of speech comes from rules requiring conformity to standards of public morality, which censor unacceptable material, and which are intolerant of unusual behaviour” (Jones 1990, 7). Arguably the ISP policy will deny access to socially challenging material, consequently resulting in clear ramifications for the Australian public. Blocking this material does little by way of protecting children online but clearly violates established freedoms where the flow, access and reporting of information is so fundamental to the basic principles of democracy.

REFERENCES


McLelland, M. J. 2010. 'Australia's Proposed Internet Filtering System: Its Implications For Animation, Comic and Gaming (ACG) and Slash Fan Communities', *Media International Australia*, 134, February: 7-19.


ENDNOTES

1. Australia is a signatory to the United Nations Article 19 of the 1948 *Universal Declaration of Human Rights* (UDHR) and Article 19 of the 1966 *International Covenant on Civil and Political Rights* (ICCPR) (Jordan 2002; Lumby et al 2009) (which is ratified), which affirms the rights to freedom of opinion and expression, however, what protection this brings to Australian citizens is unclear.